Before the Federal Communications Commission Washington, D.C. 20554

| In the Matter of |) | |
|--|---|----------------------|
| Review of the Emergency Alert System; |) | EB Docket No. 04-296 |
| Review of the Emergency Aicht System, |) | ED DOCKET NO. 04-230 |
| Independent Spanish Broadcasters Association, | j | |
| the Office of Communication of the United |) | |
| Church of Christ, Inc., and the Minority Media |) | |
| and Telecommunications Council, Petition for |) | |
| Immediate Relief |) | |
| |) | |
| Randy Gehman Petition for Rulemaking |) | |

ORDER ON RECONSIDERATION

Adopted: April 19, 2012 Released: April 19, 2012

By the Commission:

I. INTRODUCTION

1. On January 10, 2012, we released our *Fifth Report and Order* in the above-referenced docket, in which we adopted rules specifying the manner in which Emergency Alert System (EAS) Participants must be able to receive alert messages formatted in the Common Alerting Protocol (CAP), and streamlined our Part 11 rules to enhance their effectiveness and clarity. In this Order, we reconsider one aspect of the *Fifth Report and Order*: the applicability of text-to-speech (TTS) specifications set forth in the EAS-CAP Industry Group (ECIG) Implementation Guide recommendations. As we discuss below, we are deferring action on, rather than prohibiting, the use of the ECIG Implementation Guide's TTS specifications. Accordingly, we amend our EAS rules so that EAS Participants may, but are not required to, employ the text-to-speech functions described in the ECIG Implementation Guide.³

¹ See Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief; Randy Gehman Petition for Rulemaking, EB Docket 04-296, *Fifth Report and Order*, 27 FCC Rcd 642 (2012) (*Fifth Report and Order*). CAP is an open, interoperable standard, developed within the OASIS (Organization for the Advancement of Structured Information Standards) standards process, that incorporates a language developed and widely used for web documents. CAP-formatted alerts can include audio, video or data files; images; multilingual translations of alerts; and links providing more detailed information than what is contained in the initial alert (such as streaming audio or video). CAP utilizes standardized fields that facilitate interoperability between and among devices. For more on CAP, *see Fifth Report and Order* at 648-49, paras. 10-11.

² As detailed *infra*, the EAS-CAP Industry Group (ECIG) Implementation Guide sets forth specifications for using TTS technology. *See infra* note 7.

³ See Fifth Report and Order, 27 FCC Rcd at 658, para. 38. EAS Participants must be in compliance with these requirements by June 30, 2012. See Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief, ET Docket No. 04-296, Fourth Report and Order, 26 FCC Rcd 13710 (2011).

II. BACKGROUND

- 2. In the *Fifth Report and Order*, we limited the scope of the new Part 11 EAS CAP-related obligations to those necessary to ensure that CAP-formatted alert messages distributed to EAS Participants will be converted into and processed in the same way as messages formatted in the current EAS Protocol.⁴ In that regard, we required EAS Participants to be able to convert CAP-formatted EAS messages into messages that comply with the EAS Protocol requirements,⁵ following the procedures for such conversion as set forth in the ECIG Implementation Guide.⁶
- Notwithstanding that we mandated compliance with most of the ECIG Implementation Guide, we declined at that time to impose such a mandatory approach with respect to the ECIG Implementation Guide's provisions regarding TTS. We noted, for example, that the accuracy and reliability of TTS had not been established in the record.⁸ We also recognized that a regime that addressed lack of audio by focusing on the EAS Participant end – where the EAS Participants would effectuate the TTS conversion by using any of the available TTS software packages that may be configured into their EAS equipment – might be less desirable than an approach that required the message originator to make the conversion with TTS software on the originating end. Because of the need for multiple conversions using a variety of software, the former approach would be more prone to the generation of differing, and thus confusing, audio messages to be broadcast for the same EAS message. The latter approach would tend to avoid this risk by applying the conversion before the alert is widely distributed throughout the community of EAS Participants. ⁹ We further observed that the Federal Communications Commission (Commission) may consider the TTS issue in an upcoming proceeding.¹⁰ Accordingly, we stated that we "continue to believe that discussion of text-to-speech and speech-to-text software is best reserved for a separate proceeding, and [that] we therefore defer these issues at this time.11
- 4. In order to avoid imposing the Guide's mandatory approach toward TTS conversions which would have required EAS Participants to effectuate such conversions using EAS Participant-provided technologies if their EAS devices could support them we revised section 11.56 of the Commission's rules¹² to preclude application of the Guide's mandatory requirement outright, as follows:

⁴ See Fifth Report and Order, 27 FCC Rcd 642, 654, para. 4.

⁵ See 47 C.F.R. § 11.31.

⁶ See Fifth Report and Order. 27 FCC Rcd at 657-59, paras. 36-40.

⁷ For EAS messages that lack audio, the ECIG Implementation Guide's provisions on TTS require an EAS Participant to use TTS technology (provided on the EAS Participant end) if the EAS Participant's EAS device supports such technology. *Id.* at 658, para. 38 (citing ECIG Implementation Guide, § 3.5.1).

⁸ *Id*.

⁹ *Id*.

¹⁰ For example, a proceeding related to implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010. *See id.*, n.122.

¹¹ *Id.*, para. 38. *See also*, Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief; Randy Gehman Petition for Rulemaking, EB Docket 04-296, *Third Further Notice of Proposed Rulemaking*, 26 FCC Rcd. 8149, 8219-20, para. 195 (2011) ("we believe that discussion of speech-to-text (as well as text-to-speech) software is best reserved for our Broadband Alerting Notice of Inquiry, or other more appropriate proceedings") (footnote omitted).

¹² 47 C.F.R. § 11.56.

(a) On or by June 30, 2012, EAS Participants must have deployed operational equipment that is capable of the following:

. . .

- (2) Converting EAS alert messages that have been formatted pursuant to the (i) Organization for the Advancement of Structured Information Standards (OASIS) Common Alerting Protocol Version 1.2 (July 1, 2010), and (ii) Common Alerting Protocol, v. 1.2 USA Integrated Public Alert and Warning System Profile Version 1.0 (Oct. 13, 2009), into EAS alert messages that comply with the EAS Protocol ... in accordance with the technical specifications governing such conversion process set forth in the EAS-CAP Industry Group's (ECIG) Recommendations for a CAP EAS Implementation Guide, Version 1.0 (May 17, 2010) (except that any and all specifications set forth therein related to using text-to-speech technology ... shall not be followed). 13 ...
- 5. We also stated in the *Fifth Report and Order* that "we do not permit the construction of EAS audio from a CAP text message at this time," and noted that "we will not allow EAS Participants to use text-to-speech software configured in their EAS equipment to generate the audio portion of an EAS message." message."
- 6. On March 12, 2012, the Federal Emergency Management Agency (FEMA) made a filing, titled a "Petition for Reconsideration" (FEMA Request), requesting reversal of the Commission's decision in the *Fifth Report and Order* "to deviate from the [ECIG] Implementation Guide in the matter of text-to-speech conversion." In its request, FEMA states that the Commission, by prohibiting use of the ECIG Implementation Guide TTS specifications "discourages and ... limits further development of text-to-speech technology in support of EAS." FEMA also notes that an "unintended consequence of disallowing [TTS] conversion by CAP EAS devices is that CAP messages supplied without audio content ... may cause a CAP-EAS device to interrupt the programming of EAS participants" and only convey limited information. According to FEMA, the lack of TTS conversion capability could possibly disrupt dissemination of National Weather Service alerts, delay retrieval of referenced audio files in alerts, and impact the ability of jurisdictions with limited resources, or those with certain, already implemented CAP alerting capabilities, to issue CAP-formatted alerts. FEMA requested that the Commission delete the

¹³ Obligation to Process CAP-Formatted EAS Messages, 77 Fed. Reg. 16,706 (2012) (to be codified at 47 C.F.R. § 11.56(a)(2) (emphasis added)).

¹⁴ Fifth Report and Order, 27 FCC Rcd 642, 658 n.118.

¹⁵ *Id.* at 699 n.496.

¹⁶ Federal Emergency Management Agency Petition for Reconsideration, EB Docket 04-296 (filed March 12, 2012) (FEMA Request). Subsequently, and before publication of the *Fifth Report and Order* in the Federal Register on March 22, 2012, a number of filings requesting similar action were made in this docket. *See infra* note 22. We do not treat these requests as petitions for reconsideration that are properly filed, but rather consider their merits on our own motion. 47 C.F.R. § 1.108; *see, e.g., Petitions for Reconsideration of the Second Report and Order Implementation of Section 207 of the 1996 Act, 14 FCC Rcd 19924, 19925, para. 3 (1999) (petition for reconsideration of rulemaking decision that was filed before Federal Register publication is prematurely filed, although Commission considered the request <i>sua sponte*).

¹⁷ FEMA Request at 2.

¹⁸ *Id.* at 2-3.

¹⁹ *Id*. at 3-4.

reference to "using text-to-speech technology" from the revised section 11.56(a)(2).²⁰ The recent Final Report of Working Group 9 of the Commission's third Communications Security, Reliability and Interoperability Council (CSRIC) reiterates these same concerns.²¹ We have also received filings from state and local emergency management agencies and others requesting a similar change to this rule.²²

III. DISCUSSION

- 7. Upon review of our *Fifth Report and Order*, and based on the observations and arguments made in various filings since release of that decision, we have concluded that an absolute bar against using the specifications set out in the ECIG Implementation Guide could have unintended negative consequences, such as compromising the ability of EAS Participants to receive EAS messages from states and local governments that have implemented CAP-based alerting systems that rely on TTS technologies. Moreover, such a bar would depart from our original intention to maintain a more neutral stance on the best approach for establishing TTS requirements pending fuller consideration of the issues involved. And we are convinced that the merits of mandating TTS use have yet to be fully developed in the record.
- Accordingly, pursuant to section 1.108 of our rules, ²³ on our own motion we reconsider and revise section 11.56(a)(2) of our rules to replace the parenthetical phrase "except that any and all specifications set forth therein related to using text-to-speech technology and gubernatorial 'must carry' shall not be followed" with the phrase "except that any and all specifications set forth therein related to gubernatorial 'must carry' shall not be followed, and that EAS Participants may adhere to the specifications related to text-to-speech on a voluntary basis." We also revise footnote 118 of the *Fifth Report and Order* to delete the phrase "While we do not permit the construction of EAS audio from a CAP text message at this time . . ." and revise footnote 496 of the *Fifth Report and Order* to delete the phrase " . . . we will not allow EAS Participants to use text-to-speech software configured in their EAS equipment to generate the audio portion of an EAS message . . ." With these revisions, we hereby defer consideration of the ECIG Implementation Guide's adoption of TTS software configured in EAS equipment to generate the audio portion of an EAS message, and thus neither require nor prohibit EAS Participants from following the ECIG Implementation Guide's specifications on use of TTS.

²⁰ *Id*. at 4.

²¹ See Communications Security, Reliability and Interoperability Council, Working Group 9, Final Report – Part 1 (March 2012) at 11-14.

²² See e.g., Douglas County, KS Emergency Management, Ex Parte Comment, EB Docket 04-296 (filed March 27, 2012); Colorado Emergency Management Association, Ex Parte Comment, EB Docket 04-296 (filed March 26, 2012); City of Fairfax (VA) Emergency Management, Ex Parte Comment, EB Docket 04-296 (filed March 23, 2012); National Association of Broadcasters, Notice of Ex Parte Communication, EB Docket 04-296 (filed Feb. 15, 2012) at 1; EAS-CAP Industry Group (ECIG), Ex Parte Comment, EB Docket 04-296 (filed March 12, 2012) at 1-4.

²³ 47 C.F.R. § 1.108.

²⁴ The revised rule is contained in the Appendix to this order.

²⁵ Fifth Report and Order, 27 FCC Rcd 642, 658 n.118

²⁶ *Id.* at 699 n.496.

IV. PROCEDURAL MATTERS

A. Accessible Formats

9. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

B. Regulatory Flexibility Analysis

10. The Regulatory Flexibility Act (RFA)²⁷ requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." In this Order, we remove the prohibition on following the ECIG Implementation Guide's specifications related to using TTS technology, and clarify that EAS Participants may, but are not required, to use these specifications. We hereby certify that this rule revision will not have a significant economic impact on a substantial number of small entities, because this action merely provides EAS Participants with the option to use these specifications. EAS Participants may continue to opt not to use these specifications and thereby maintain the status quo. The Commission will send a copy of this Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.²⁹ In addition, we will publish this Order (or a summary thereof) and certification in the Federal Register.³⁰

C. Paperwork Reduction Act Analysis

11. This document contains no modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13.

D. Congressional Review Act

12. The Commission will send a copy of this Order on Reconsideration in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act ("CRA"), see 5 U.S.C. § 801(a)(1)(A).

E. Effective Date of Rule

13. We make this rule revision effective immediately upon publication in the Federal Register, pursuant to Section 553(d) of the Administrative Procedure Act.³¹ In this case, where our action removes a restriction that would have applied to EAS Participants and retains the *status quo*, we find there is no need for the 30-day period.³² In addition, we conclude that good cause exists to make the rule effective immediately upon Federal Register publication.³³ In making the good cause determination,

²⁷ See 5 U.S.C. § 604. The RFA, see 5 U.S.C. § 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

²⁸ 5 U.S.C. § 605(b).

²⁹ *Id*.

 $^{^{30}}$ Id

³¹ 5 U.S.C. § 553(d).

³² See 5 U.S.C. § 553(d)(1) (a substantive rule that "grants or recognizes an exemption or relieves a restriction" can be made effective with less than thirty days' notice).

³³ See 5 U.S.C. § 553(d)(3).

agencies must balance the necessity for immediate implementation against principles of fundamental fairness that require that all affected persons be afforded a reasonable time to prepare for the effective date of a new rule.³⁴ No party will be prejudiced by an expedited effective date for this rule revision. This revision simply now provides them with the option to follow the ECIG Implementation Guide's TTS provisions should they choose to do so. However, the expedited date is necessary to provide the parties with regulatory certainty sufficiently in advance of the current June 30, 2012, deadline for complying with the relevant requirements of the *Fifth Report and Order*. There is also no information collection associated with this rule revision, so no OMB approval is required for the revised rule.

V. ORDERING CLAUSES

- 14. Accordingly, IT IS ORDERED that, pursuant to section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, this Order on Reconsideration IS ADOPTED;
- 15. IT IS FURTHER ORDERED that Part 11 of the Commission's Rules, 47 C.F.R. Part 11, IS AMENDED as set forth in the Appendix. This Order shall become effective immediately upon publication in the Federal Register;
- 16. IT IS FURTHER ORDERED that the Petition for Reconsideration filed of the Federal Emergency Management Agency on March 12, 2012, in EB Docket 04-296 is dismissed as moot;
- 17. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Order on Reconsideration*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch Secretary

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³⁴ See, e.g., Omnipoint Corporation v. FCC, 78 F.3d 620, 630 (D.C. Cir. 1996), citing United States v. Gavrilovic, 551 F.2d 1099, 1105 (8th Cir. 1977).

APPENDIX

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 11 to read as follows:

PART 11 – EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

2. Amend § 11.56 by revising paragraph (a)(2) to read as follows:

§ 11.56 Obligation to Process CAP-Formatted EAS Messages.

(a) * * *

(2) Converting EAS alert messages that have been formatted pursuant to the (i) Organization for the Advancement of Structured Information Standards (OASIS) Common Alerting Protocol Version 1.2 (July 1, 2010), and (ii) Common Alerting Protocol, v. 1.2 USA Integrated Public Alert and Warning System Profile Version 1.0 (Oct. 13, 2009), into EAS alert messages that comply with the EAS Protocol, such that the Preamble and EAS Header Codes, audio Attention Signal, audio message, and Preamble and EAS End of Message (EOM) Codes of such messages are rendered equivalent to the EAS Protocol (set forth in §11.31), in accordance with the technical specifications governing such conversion process set forth in the EAS-CAP Industry Group's (ECIG) Recommendations for a CAP EAS Implementation Guide, Version 1.0 (May 17, 2010) (except that any and all specifications set forth therein related to gubernatorial "must carry" shall not be followed, and that EAS Participants may adhere to the specifications related to text-to-speech on a voluntary basis). * * *

* * * * *